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No. 870

In the Supreme Court of the United States

OCTOBER TERM, 1956

THE BALTIMORE AND OHIO RAILROAD COMPANY,
PETITIONER

v.

DANIEL T. JACKSON, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

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INDEX

	Page
STATEMENT	1
SUMMARY OF ARGUMENT	3–4
ARGUMENT	5
The small maintenance of way vehicles involved in this case are not locomotives, cars, trains or similar vehicles as those terms are used in the Safety Appliance Acts	5
CONCLUSION	26
APPENDIX—Safety Appliance Acts	27

CITATIONS

Cases:	
Hoffman v. *New York, N. H. & H. R. Co.*, 74 F. 2d 227, cert. den., 294 U. S. 715	16
Johnson v. *Southern Pacific Co.*, 196 U. S. 1	6, 9
Lilly v. *Grand Trunk R. Co.*, 317 U. S. 481	6
Napier v. *Atlantic Coast Line*, 272 U. S. 605	4, 22
Pennell v. *Phila. & Reading Ry.*, 231 U. S. 675	23
Statutes and Regulations:	
Accident Reports Act:	
45 U. S. C. 40	24
Interstate Commerce Act:	
49 U. S. C. 304 (a) (1) and (2)	5
Locomotive Inspection Act:	
45 U. S. C. 22	1, 22
Safety Appliance Acts:	
45 U. S. C. 1–16	1, 4, 27
45 U. S. C. 6	2, 28
45 U. S. C. 8	6, 15, 30
45 U. S. C. 1–7	10, 28
45 U. S. C. 11–16	17, 31
45 U. S. C. 15	35
Code of Federal Regulations, Title 49:	
Section 91.200	1
Section 125.16	19
Section 131	18
Section 132.2	18
Miscellaneous:	
24 Cong. Rec. 1280	7
24 Cong. Rec. 1477	11
28 Cong. Rec. 3093	13
28 Cong. Rec. 3129	13
H. R. Rep. 727, 54th Cong. 1st Sess	13

Miscellaneous—Continued	Page
H. R. Rep. 1558 on H. R. 378, 81st Cong. 2d Sess	5, 24
Hearing on H. R. 378 and H. R. 530, 81st Cong. 2d Sess	23
Sen. Rep. No. 1049 on H. R. 9350, 52d Cong. 1st Sess	7, 8
Sen. Rep. No. 1930 on S. 3560, 57th Cong. 1st Sess	16
Annual Reports of the I. C. C.:	
3d Annual Report (1889)	9
5th Annual Report (1891)	9
6th Annual Report (1892)	9
14th Annual Report (1900)	14
15th Annual Report (1901)	15
16th Annual Report (1902)	15
20th Annual Report (1906)	17
23d Annual Report (1909)	17
I. C. C. Accident Bulletin No. 124	19
I. C. C. Activities 1887–1937	10
Biographical Directory of the American Congress 1774–1949	11
Hertel, D. W., History of Brotherhood of Maintenance of Way Employes (1955)	20
I Sharfman, The Interstate Commerce Commission, 245	5

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 370

THE BALTIMORE AND OHIO RAILROAD COMPANY,
PETITIONER

v.

DANIEL T. JACKSON, RESPONDENT

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

STATEMENT

The Commission's interest in this particular case stems from the fact that it is charged with the duty of enforcing the Safety Appliance Acts [1] as well as prescribing the standards, namely, the number, dimensions, location and manner of application for many of the appliances specified in those acts.

Generally, vehicles subject to those acts must be equipped with such devices as power driving-wheel brakes, appliances for operating the train brake system, automatic couplers of a standard height, sill steps, grab irons and hand holds, and hand brakes.[2]

[1] 27 Stat. 531 (1893), 29 Stat. 85 (1896), 32 Stat. 943 (1903), 36 Stat. 298 (1910), 45 U. S. C. 1–16 (1952). The statutes are reproduced in the Appendix.

[2] Moreover I. C. C. regulations (49 C. F. R. 91.200) issued under the Locomotive Inspection Law (45 U. S. C. 22–34) require on locomotives other than steam such appliances as headlights, whistles and sanding apparatus.

So far as we are able to ascertain, every one closely associated with the subject has always construed the Safety Appliance Acts as not applying to the numerous (R. 78) small railroad maintenance of way vehicles such as are involved here.[3] As a result, those vehicles have never been equipped[4] in the manner required by the acts, and it is not difficult to perceive that a reversal of that interpretation now will raise serious practical problems not only for the railroads, but also for the Commission. Because the issue is of national importance and since it transcends the private interests of the railroad and of Jackson, its section foreman, the Commission desires to present its views to this court.

The primary ground upon which the lower court's judgment rests is that the vehicles involved here do not come within the exemption contained in section 6 (45 U. S. C. 6) which reads as follows:

> *Provided,* That nothing in this Act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

As the opinion below states (R. 98), the proviso originally exempted "trains composed of four-wheel cars or * * * locomotives used in hauling such

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[3] Photographs of vehicles similar to the ones involved here are contained in Appendices C & D to petitioner's brief.

[4] Some of them are equipped with a type of brake and with other devices such as windshields and headlights required by State laws. Appendix B to petitioner's brief contains reference to the State laws. Also, see page 21, infra.

trains," and was intended primarily to cover coal trains. However, in 1896, the wording was changed to its present form for the purpose of including in the exemption trains made up of low eight-wheel logging cars.

While there is logic in the petitioner's argument that the proviso can be interpreted to include the vehicles involved here, in our view a preliminary question for consideration is whether those vehicles are locomotives, cars, trains or similar vehicles as the terms are used in the Acts. A negative answer to that question disposes of this case.

The lower court ruled that the track motor car is a "locomotive" and assumed that the push truck is a "car" and the two combined a "train" (requiring power brakes), as those terms are used in the Safety Appliance Acts.

SUMMARY OF ARGUMENT

The Safety Appliance Acts, applicable to "trains, locomotives, tenders, cars and similar vehicles", do not apply to small maintenance vehicles, such as the motor track car and the push truck involved in this case. The general purpose of the Safety Appliance Acts is to protect the operating employees of the railroads from hazards involved in the movement of cars and trains. This purpose was accomplished largely in two ways: (1) the requirements for the use of automatic couplers and drawbars of standard height made it unnecessary for operating employees to work between the cars; (2) the requirements for the use of power or train brakes eliminated much of the necessity for employees to operate the hand brakes on the top

of cars. The entire history of the Safety Appliance Acts reflects public and Congressional concern with the hazards of moving standard railroad cars and locomotives and "similar vehicles", such as cabooses and snow plows, which are used with such standard equipment.

Since 1893, the Interstate Commerce Commission has been charged with administration of the Safety Appliance Acts, and has played an active role in developing and perfecting this legislation. Throughout this period, the Commission has considered that small maintenance of way vehicles are not subject to the Safety Appliance Acts. This consistent administrative construction, known to Congress, the railroad industry and railroad labor organizations, is persuasive evidence that the Safety Appliance Acts were never intended to apply to such vehicles.

It is similarly significant that the railroad unions have never contended that the Safety Appliance Acts apply to small maintenance vehicles. Rather, they have concentrated upon securing State legislation which is tailored to the characteristics of such vehicles. Under the decision below that such a track car is a "locomotive", it may well follow that such state legislation is invalid on the theory that by the Locomotive Inspection Act Congress has preempted the field. *Napier* v. *Atlantic Coast Line*, 272 U. S. 605, 611.

It has not been shown that it is feasible to equip track cars and push trucks with power brakes and the other appliances required by the Safety Appliance Acts. Indeed, such equipment might create additional hazards in the use of such cars.

ARGUMENT

The small maintenance of way vehicles involved in this case are not locomotives, cars, trains or similar vehicles as those terms are used in the Safety Appliance Acts

To begin with, existing railroad safety legislation consists of a series of specific statutory requirements rather than a grant of broad and flexible power as in Section 204 (a) (1) and (2) of the Interstate Commerce Act, (49 U. S. C. 304 (a) (1) and (2)) applicable to motor carriers. Thus, in 1950, when Congress was considering proposed legislation designed to give the Commission jurisdiction over operating rules and regulations of the railroads, in order to provide better protection for the small maintenance of way vehicles, among other purposes, the House Committee report[5] on the bill stated:

> Congress has from time to time enacted legislation dealing with specific matters concerning railroad safety. The more important legislation enacted for this purpose is as follows: The Locomotive Boiler Inspection Act, the Safety Appliance Acts, the Accident Reports Act, the Hours of Service Act, and the provision of the Interstate Commerce Act (Sec. 25) proposed to be amended by this bill, sometimes referred to as the block-signal law. The legislation here proposed is in line with this policy of legislating with regard to particular matters affecting railroad safety as the need for such legislation is shown to exist.

Thus, the Safety Appliance Acts and related statutes do not purport to cover every aspect of safety in

[5] H. R. Report No. 1558, on H. R. 378, 81st Cong. 2d Sess., January 31, 1950 (p. 3). Also see I Sharfman, The Interstate Commerce Commission, 245 et seq.

railroad operations. Both regulatory power and civil liability in this area must be found in specific statutory provisions.

The specific statutory provisions of the Safety Appliance Acts as amended in 1903 are applicable to:

> * * * all trains, locomotives, tenders, cars and *similar vehicles* used on any railroad engaged in interstate commerce * * * and to all other locomotives, tenders, cars, and *similar vehicles* used in connection therewith * * *. [Emphasis supplied.] (45 U. S. C. 8.)

When read in context, those provisions, while extremely broad, are not all inclusive. The term "similar vehicles" indicates that not all vehicles were being included and, as we shall demonstrate, the terms "locomotives" and "cars" were used in their ordinary sense and cannot be construed to include the small maintenance of way vehicles involved in this case.

We submit that in determining whether the small maintenance of way vehicles are subject to the Safety Appliance Acts, consideration properly may be given to the problems which brought about the legislation.[6] Before doing so, however, we invite attention to the fact that there is a sharp distinction between the safety needs of maintenance of way employees, with which we are here primarily concerned, and those of trainmen. For the latter, such devices as automatic couplers (to keep the men from going between the cars) and train brakes (to keep the men off the tops of

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[6] This court has deemed itself fortunate in having other sources to refer to and in not being left "to its own resources" in construing the Acts. *Lilly* v. *Grand Trunk R. Co.*, 317 U. S. 481, 486. Also see *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 19.

cars) are of first importance historically. In contrast, for the former, protection against trains by means of strict enforcement of sound operating rules and regulations is of prime importance.

During the last half of the 19th century, the American public became increasingly concerned over the appalling railroad casualty list. That concern was almost wholly over the lack of uniform automatic couplers[7] and power brakes on freight trains. Passenger trains were equipped with such appliances. In those days, the coupling device in general use on freight cars was the link and pin coupler, which made it necessary for employees to go between the ends of the cars and operate the coupler by lifting the pin, and frequently adjusting the link. Couplers were of different makes and heights, and there was no guarantee that they would meet when two cars were brought together. Many men were crushed in the process.[8]

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[7] Thus the Senate Report on the original bill stated (Sen. Report 1049, on H. R. 9350, 52d Cong., 1st Sess., p. 5):

"* * * Were the use of freight cars limited to a single State then State laws would be adequate, but the cars within any State at any particular time are largely such as pass from road to road, and from State to State indiscriminately, no State line being recognized in railway traffic. The freight car of Massachusetts loaded with the products of that State may in three weeks reach California, passing from ocean to ocean; or the car of an Illinois road may pass through three or four States in a less number of days on its journey from the Lakes to the Gulf. Either of them may have the coupler sanctioned by the State from which it started, but from its lack of interchangeability with the couplers of those cars with which it must be coupled to perform its mission of transporting the commerce of the country; it produces death and destruction in every freight yard it enters."

[8] The following vivid description of the operation is found at 24 Cong. Rec. 1280:

"Just imagine what takes place every time a freight train is

The agitation for power brakes on freight trains centered around the desire to eliminate, as far as possible, the necessity for employees to be on top of the cars to operate the hand brakes on a moving train. Thus Lorenzo S. Coffin, of Iowa, testifying on behalf of the Brotherhoods, among others, in support of the proposed safety law in 1892,[9] stated:

> "Many contend that a bill requiring "power" or "train" brakes—for they mean one and the same thing—is more necessary and important than one requiring automatic couplers. As a matter of fact there are nearly twice as many men killed yearly from being required to use hand brakes on freight than are killed from handling couplers, but there are not so many injured. The casualties are more fatal.
>
> Statistics from the Interstate Commerce Commission reports show that 557 were killed from falling from trains, and 2,348 injured in the year ending June 30, 1890. These men receive their death and injuries from being obliged to be on top of freight trains to use handbrakes. When

made up. A railroad employee, a laboring man, is asked to step inside the track, stand up against a car which is not moving, and watch the coming of another car, which is being pushed steadily up against the car near which he stands. It is being pushed up by the locomotive away at the farther end of the train, 100 cars off perhaps, the engineer utterly unable to see the space which is to be filled up by his train, pushing the train back, back, back, watching perhaps for a wave of the hand or a wave of a lantern to tell him when he has gone far enough. With that engineer moving that train this long distance off, there stands the railroad's employe waiting until the cars come up near to him, which a few inches nearer would destroy him. Then if the dead wood come together and his life is saved, he is to couple the cars."

[9] Sen. Rep. No. 1049, on H. R. 9350, 52d Cong., 1st Sess. on July 22, 1892, (pp. 109–110).

> is added to this the great number of accidents resulting from collisions, and running into open switches, and obstructions which could have been avoided had cars been equipped with power brakes under the immediate control of the engineer, the number would at least be swelled 50 per cent. The mere statement of this terrible fact, which no intelligent man will question, is all the argument that need be offered in favor of a law requiring that all interstate freight trains shall have enough cars in such trains equipped with power brakes so that the engineer can at all times control his train without requiring human beings to be at the cruel and inhuman exposure incident to the work of controlling trains by handbrakes.

The subject was of such importance that President Harrison on several occasions [10] urged enactment of legislation dealing with automatic couplers and power brakes on freight trains. Thus, in his annual message in December, 1889, he directed attention to a resolution of the State Railroad Commissioners calling upon the Interstate Commerce Commission "to consider what can be done to prevent the loss of life and limb in coupling and uncoupling freight cars and in handling the brakes of such cars".[11]

Needless to say, the Interstate Commerce Commission took an active part in urging the legislation.[12] Thus we

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[10] Id. (pp. 2–3); *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 19.

[11] The Commission's Annual Report of 1889, at pages 85–86 relates that the State Commissions were urging Federal legislation because State action could not cope with a subject which required uniform national rules.

[12] See Commission's Annual Report of 1889, pages 84–101, the report of 1891, pages 337–340 and report of 1892, pages 69 and 74.

are told in Interstate Commerce Commission Activities, 1887–1937, at page 118:

> Prior to 1887, some State safety legislation had been enacted and the subject of safety had been given serious consideration by the Master Car Builders' Association. The State legislation proved both conflicting and inadequate, and the constructive findings of the Master Car Builders' Association were often ignored. Federal action was early urged upon the Commission. In a report to Congress in 1889 after a general investigation of the subject had been made, the Commission analyzed the causes of casualties and emphasized the need of Federal legislation. This need was reiterated in its report for 1891. Edward A. Moseley, who came to Washington in 1887, as the first Secretary of the Interstate Commerce Commission, became so convinced of the necessity for adequate safety laws that he immediately began a campaign of education and agitation for Federal legislation. To his untiring efforts more than to anything else may be attributed the passage of the Safety Appliance Act.

Against this background, the original Safety Appliance Act was enacted in 1893. 45 U. S. C. 1–7. It was limited to those locomotive engines and cars operated in interstate commerce. Section 1 required a power driving-wheel brake and appliances for operating the train brake system on the locomotives; trains were to have a "sufficient" number of cars equipped with power brakes so that they could be controlled "without requiring brakemen to use the common hand brake for that purpose." Section 3 provided that once a railroad had complied with Section 1, it could refuse to accept from other lines any cars not suffi-

ciently equipped with train brakes "as will work and readily interchange with the brakes in use on its own cars". Section 2 provided that cars were to be equipped with automatic couplers so that men would not have to go "between the ends of the cars", and under Section 5 the draw bars (couplers) on freight cars were to be of a standard height. Section 4 required that the cars were to be provided with "secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars." Under Section 7, the time for compliance specified in the Act could be extended by the Commission, and under Section 8 the defense of assumption of risk was abolished. Section 6 provided a penalty for violation of the Act, and enjoined the Commission to bring to the attention of the proper district attorney information of any violations which came to its knowledge. The proviso of that section exempted from the Act "trains composed of four-wheel cars or * * * locomotives used in hauling such trains".

The proviso was offered as an amendment to the original bill. The Senator offering the amendment stated:[13]

> Mr. BLODGETT. I desire to offer an amendment. At the end of section 6 of the bill as reprinted I move to add the following proviso:
> *Provided,* That nothing in this act contained

[13] 24 Cong. Rec. 1477. Senator Blodgett was superintendent of the New York & Long Branch Railroad from 1884 to 1910, and a builder of railroad equipment. Biographical Directory of the American Congress, 1774–1949 (p. 861).

shall apply to trains composed of four-wheel cars or to locomotives used in hauling such trains.

* * * * *

Mr. President, I presume most Senators understand that coal from the mines is transported to the seaboard in four-wheel cars. The custom is to run such cars to the junction points of lateral roads and from those junction points to the mines where they are loaded. The four-wheel cars are used, because it would be practically impossible to run an eight-wheel car to the mines over the sharp grades and around the sharp curves necessary in reaching the mines. The coupling construction is a peculiar one, and is adapted to that peculiar work. A hook arrangement and link are used with considerable lost motion between the cars.

It is necessary to use that appliance, as I said, in order to go around the sharp curves. I believe it would be practically impossible to place the train brake and automatic coupler upon cars such as are used in that traffic, and if the bill is not amended as I propose, it will compel a reshipment of coal at all the junction points on the lateral roads to the main stem. I do not know that the cars containing but four wheels are used in any other service in the country except the coal service. Hence, I think the amendment is a very proper one.

The wording of the proviso as it exists today was inserted in 1896. The purpose of the 1896 amendment was to exclude trains composed of low eight-wheel logging cars. Thus as originally proposed the amendment read:

> *Provided,* That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such cars from top of rail to center of coupling does not exceed 25 inches, or to locomotives used in hauling such trains.

As indicated in a letter attached to the House Report [14] on this proposed amendment, the Interstate Commerce Commission was concerned over the proposed outright exemption of logging cars and, apparently in an attempt to restrict the amendment, the following words were added thereto on the floor of the House upon recommendation of the Committee: "when such cars or locomotives are exclusively used for the transportation of logs". 28 Cong. Rec. 3093. The amendment as thus changed was passed by the House, and on the next day by the Senate, after the following explanation by Senator Wolcott (28 Cong. Rec. 3129):

> There has just come over from the other House a bill to amend the act to promote the safety of employees and travelers. A similar bill was unanimously reported from the Committee on Interstate Commerce of the Senate, the effect of which is merely to provide that trains used exclusively for logging may be relieved from the provisions of the act. The cars used in logging trains, of which there are about 400 in the United States, are only 24 inches high, and it is physically impossible to equip them with grab irons and the other appurtenances required by law. The act goes into force very soon, and I hope the bill may now be

[14] H. R. Rep. No. 727; 54th Cong. 1st Sess. (1896).

> passed. It has passed the House of Representatives and a similar bill has passed our committee unanimously.

As the lower court pointed out in its opinion, the draftsman of the House Report mistakenly stated that the proviso in the original act was "evidently intended to apply to logging trains". (R. 101–102.)

The history of this proviso shows quite clearly that the vehicles which were to be included under the law were those "cars" and "locomotives" which could reasonably be equipped with power brakes "as will work and readily interchange with the brakes" on other equipment and with automatic couplers of a standard height.

By 1900, the railroads were in substantial compliance with the law, and, pursuant to the Commission's order, all provisions became effective on August 1 of that year. Thus the Commission was able to state in its 14th Annual Report (1900) at page 76:

> The Safety Appliance Act in all its provisions, therefore, became effective on the 1st of August last, and, as far as can be ascertained, practically all roads in the United States have since then been using automatic couplers and air brakes in the operation of their trains. That portion of the law which fixed the standard height of drawbars and made necessary the application of hand holds and grab irons has been in operation for almost five years, and, as said by the Commission in former reports, the state of equipment in those particulars has shown approximately perfect compliance with the statute.

However, the Commission was not satisfied with the law as it stood and discussed the matter in its Annual Reports of 1901 and 1902. Thus, it pointed out that the automatic coupler and hand hold provisions of the Act should be amended specifically to include locomotives, tenders and snow plows and that:

> * * * Both of these provisions of law, as also the requirement of a standard height for couplers, might reasonably be made to cover all vehicles, passenger, freight and miscellaneous, which are ordinarily hauled or propelled by standard locomotives. * * * [15]

Also:

> * * * provisions relating to automatic couplers, grab irons, and the height of drawbars, [should] be made to apply to all locomotives, tenders, cars, and similar vehicles, both those equipped in interstate commerce and those used in connection therewith (except those trains, cars and locomotives exempted by the acts of March 2, 1893, and April 1, 1896); * * * [16]

In line with these recommendations, the Act was amended in 1903 to include "trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce" and "all other locomotives, tenders, cars and similar vehicles used in connection therewith" except those covered by the proviso of section 6 and those used on street railways. 45 U. S. C. 8.

The legislative history reveals that the term "similar vehicles" was used advisedly. In the original bill,

[15] Annual Report 1901 (p. 68).
[16] Annual Report 1902 (p. 61).

the unrestricted word "vehicles" had been used, and a railroad representative had objected to it on the ground that it was too broad. He suggested the term "traffic cars". The legislative representative of the Brotherhoods agreed that the term was broad but stated that the suggested substitute was not satisfactory because:[17]

> * * * there are cabooses, steam shovels, snowplows, scale cars, and similar conveyances. There are men in the western part of the country who are engaged for weeks in the winter in doing what they call "bucking snow"; to do that they have to couple on to snowplows. They should also be equipped with these appliances.

The term "vehicles" was thereafter changed to "similar vehicles". This history indicates quite clearly that the term was used to cover such special equipment as snow plows and the like, which for purposes of transportation are similar vehicles and can be used in connection with the standard equipment.[18] The term clearly does not include the small maintenance of way vehicles, and of course, those vehicles are in no sense similar to special equipment such as cabooses, snow plows and the like. They are, therefore, not trains, locomotives or cars as those terms are used in the Acts.

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[17] Senate Report No. 1930, on S. 3560, 57th Congress, 1st Sess., (p. 46).

[18] The term could also reasonably be construed to include the four-wheel gasoline engine involved in *Hoffman* v. *New York, N. H. & H. R. Co.*, 74 F. 2d 227, cert. den., 294 U. S. 715, because that vehicle was equipped with an automatic coupler and was frequently used in the place of a locomotive. A picture of those vehicles is contained in this court's file No. 647, Oct. Term 1934 (R. 394).

The Commission continued to give close attention to the subject, and reported to Congress on matters which were deemed worthy of attention. Thus, in its 1909 Annual Report, at pages 40–41, the Commission stated:

> As pointed out in previous reports of the Commission, however, the law is too limited in its scope to afford that full measure of protection to which railroad employees are entitled. * * * Such appliances as sill steps, ladders, roof hand holds, running boards, and hand brakes are vitally necessary for the safety of employees, and it is of the highest importance that they be properly applied and maintained in the best possible condition; but as these appliances are not covered by the law, proper attention is not always given them and they are often permitted to run in an unsafe condition. * * *.
>
> The strongest argument for the extension of the law here recommended is found in the necessity to secure uniform equipment. It is of vital importance to employees that the appliances designed for their safety shall be placed alike on all cars of the same class, so that they may know with certainty, night or day, that they will always find them in like positions and locations.
>
> * * * * * *

The recommendations included the hand brake because "since the general introduction of air brakes the condition of the hand brakes has been sadly neglected". (1906 Annual Report p. 70.)

Pursuant to these recommendations, the Act was supplemented in 1910 to include certain additional safety appliances, 45 U. S. C. 11–16. Cars were to be

equipped with secure sill steps and efficient hand brakes; cars requiring secure ladders and running boards were to be so equipped; secure hand holds or grab irons were to be installed on the roofs at the tops of such ladders, and the Commission was to designate the standards for these and certain other appliances, as well as to modify or change and prescribe the standard height for draw bars.

Thereafter, the Commission, by order dated October 10, 1910, prescribed the standard height for draw bars on freight cars,[19] and by order of March 13, 1911,[20] fixed the standards for handbrakes, grab irons and hand holds, sill steps, ladders and running boards for each type of vehicle. Those orders, of course, do not refer to the small maintenance of way equipment. The reason is obvious. The very nature of that equipment and the appliances specified in the 1910 Act make it abundantly clear that the term "car" is used there in the same sense as in the earlier act. Those vehicles by their very nature cannot reasonably be equipped with the appliances listed. Of course the track motor car is equipped with a brake, but if that vehicle is a car within the meaning of the Acts, so is the push truck. Secure sill steps and efficient hand brakes on the push trucks would hardly serve a useful purpose.

For over half a century, the Commission has administered the Safety Appliance Acts, as well as the other acts relating to railroad safety. During this period, the Commission has never considered the small

[19] 49 CFR 132.2.

[20] Amended in 1943 and republished in 1946. 49 CFR 131.

maintenance of way vehicles subject to those acts,[21] and we submit that the foregoing contemporary and legislative histories furnish a sound foundation for its view. That legislation is concerned with locomotives, cars and similar vehicles which employees were formerly required to go between to couple, or to ascend to use the hand brake. The acts are designed primarily to reduce or eliminate those hazards. They

[21] Those vehicles are not considered trains, locomotives or cars under any of the railroad safety legislation. Thus the track motor car is not a locomotive under the Locomotive Inspection Law (R. 83) and for accident reporting purposes the vehicles are not considered as trains, locomotives or cars. For example, I. C. C. Accident Bulletin No. 124 (1955) defines trains, nontrain and train accidents as follows (p. 94):

"The term 'train' as used in this bulletin refers to a locomotive or more than one locomotive coupled, with or without cars, displaying markers. For the purpose of accident classification, locomotives, with or without cars, engaged in switching movements, are also considered trains. Hand cars, section motor cars, and like roadway machines are not regarded as 'cars.'

* * * * *

"Nontrain accidents are accidents not caused directly by the operation or movement of trains, locomotives, or cars that result in reportable casualties. Nontrain accidents to employees on duty are classified as attributable to:

* * * * * *

"(j) Maintenance-of-way and structures hand cars (nontrain accidents only).

"(k) Maintenance-of-way and structures motor cars (nontrain accidents only).

* * * * * *

"Train accidents are accidents with or without casualties, arising in connection with the operation or movement of trains, locomotives, or cars that result in damage to equipment or other railway property of $375 or more (including cost of clearing wreck) * * *."

Also see 49 CFR 125.16, et seq.

should not be construed to apply to entirely different types of equipment whose operation does not involve such risks. "Train" brakes on the vehicles involved here might well get the men off the tops of the cars, but not as the expression is used in the legislative history. In the absence of tests showing otherwise, it would seem that power brakes on push trucks towed by a track motor car could well be about as dangerous a device to employees riding on such vehicles as one can imagine.

As we have previously indicated, the railroad labor leaders played an important role in the enactment of the Safety Appliance Acts. Their views on whether the small maintenance of way vehicles are subject to the Safety Appliance Acts are therefore pertinent here and are not difficult to ascertain. To begin with, the Brotherhood of Maintenance of Way Employes, insofar as we are able to determine, has never challenged, informally or otherwise, the Commission's interpretation of those Acts as not applying to such vehicles. Its interest in specific appliances on those vehicles has not involved such items as automatic couplers, power brakes and the like. Rather its interest has been in windshields, windshield wipers, canopies and the like. In that field, it has properly sought and obtained state legislation. Thus, we are told in the *History of Brotherhood of Maintenance of Way Employes:*[22]

> Another long-standing grievance of railroad workers was the failure of the railroads to

[22] By D. W. Hertel, published by Ransdell, Inc., Washington, D. C., 1955 (pp. 212–213).

provide basic safety and protective equipment on track motor cars, used to transport thousands of railroad workers, most of them maintenance of way men, and tools and materials, to and from their headquarters and points of work, and from job to job over the lines of the carriers. The employes ride these cars in all kinds of weather. The average distance over which these cars are operated has been increased considerably in recent years by the lengthening of territories under the jurisdiction of maintenance of way gangs.

Numerous accidents resulting in serious injury and death to many railroad workers have occurred because track motor cars were not adequately equipped to provide for the safety and protection of the employes. Travel in dusk or in darkness or through tunnels becomes a serious hazard to workers riding on track motor cars not equipped with adequate electric headlights and taillights. No estimate can be made of the health and safety hazards encountered by railroad workers who must ride on open-deck motor cars without any protection from the elements.

Because many carriers had not provided this equipment, in spite of the repeated requests of the employes, the Brotherhood began in 1949 the sponsorship in state legislatures of bills requiring that track motor cars be equipped with electric headlights and taillights, windshields, windshield wipers, and canopies or tops. Although these bills are basic safety measures, most railroad managements have vigorously opposed their enactment, contending that electric headlights are not needed and that windshields and tops are "luxury equipment."

> Nevertheless, during 1949 and in subsequent years through 1954, twenty-six states have passed track motor car laws. Unfortunately, however, these state laws are not uniform and not all of them require full equipment. Although all twenty-six laws require electric headlights on motor cars, only seventeen require windshields, thirteen require windshield wipers, and ten require tops.

Under the various amendments to the Boiler Inspection Act, now commonly known as the Locomotive Inspection Act, 45 U. S. C. 22–34, Congress has occupied the entire field of regulating equipment on railroad locomotives. *Napier* v. *Atlantic Coast Line,* 272 U. S. 605, 611. If the track motor car is a "locomotive" as the lower court holds, 26 states, on the specific request of the Brotherhood of Maintenance of Way Employes, appear to have trespassed in a field already pre-empted by Congress. Such a conclusion should not be reached in the absence of a clear Congressional purpose to so regulate.

In the Federal field, the Brotherhood has concerned itself only with proposed legislation aimed at strict enforcement of sound operating rules and regulations. Specifically, in 1949–1950, the Commission attempted to obtain legislation giving it jurisdiction over railroad operating rules and practices. The Commission deemed the additional authority necessary, in part at least, to provide more adequate protection for the men during the operation of the track motor cars. That proposal was supported by the Brotherhood, whose president pointed out that 95 percent, or more, of all track motor car accidents

were caused by failure to provide adequate protection through operating rules and regulations for the movement of those vehicles.[23] No one suggested that the Commission had erred in failing to apply the existing Safety Appliance Acts to such vehicles.

We urge here a practical interpretation of the legislation. The Commission and this Court have adopted a practical view of these acts even with respect to equipment which, if the acts were literally construed, would require such appliances as automatic couplers. In its order of 1911, setting forth the standards, the Commission specified automatic couplers for the rear of tenders and the front of locomotives. Thus the act as interpreted by the Commission did not require automatic couplers between the engine and its tender. This practical interpretation was accepted by this Court in *Pennell* v. *Phila. & Reading Ry.*, 231 U. S. 675. The facts there as shown in the opinion were:

> The train was composed of forty-four cars, some loaded and some empty, and the engine, tender and caboose. The coupling between the cars was automatic, that between the engine and the tender was a draw-bar and pin. The pin broke in consequence of the air hose breaking or parting between the first and second cars from the caboose, thereby setting the brakes on the whole train. By the breaking of the coupling between the tender and the engine, Pennell, plaintiff's intestate, was thrown from the train upon the track and killed on Decem-

[23] Hearings before the House Subcommittee on Interstate and Foreign Commerce on H. R. 378 and H. R. 530 on May 17, 1949, page 41.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 370

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Petitioner,

v.

DANIEL T. JACKSON, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR REHEARING

Immediately after the Court's decision in this case on May 13, 1957, an investigation was begun to ascertain whether or not track motor cars and push trucks could be brought into compliance with Sections 1 and 2[1] of the Safety Appliance Act of 1893, and, if so, what cost would be imposed on the railroads and what weight would be added to the vehicles. Inquiries were addressed to prominent suppliers of air brakes and couplers. The results of these inquiries appear in affidavit form as attachments to this petition, and the

[1] Throughout this petition all references to sections of the Safety Appliance Acts are to the U. S. Code sections at the present date.

attention of the Court is respectfully directed to them. They contain factual matter relevant to the issue of whether a rehearing should be had in this case.

With respect to brakes, the affidavits of Westinghouse Air Brake Company and The New York Air Brake Company indicate that while no train brake system in use on railroads today is adaptable to use on track motor cars and push trucks, nevertheless, parts from systems in industrial use could be combined to perform the function of a train brake system on a track motor car and push truck. This equipment would cost from $460 to $620 for each track motor car and from $90 to $190 for each push truck so equipped. It would add approximately 100 pounds weight to the track motor car and 25 pounds to the push truck.[2]

With respect to couplers, it appears that no couplers now in railroad use are adaptable to use on maintenance of way vehicles. However, the "reduced size Willison coupler," manufactured by National Malleable and Steel Castings Company for use on trains of mine cars is smaller and presumably could be used on maintenance of way vehicles. These couplers, together with the pocket casting required, and without cushioning equipment, would add $120 cost to each vehicle and would add approximately 200 pounds in weight.[3]

Since there are 60,000 track motor cars in use on the country's railroads today (R. 78), and at least as many

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[2] The affidavits of Westinghouse Air Brake Company and The New York Air Brake Company are printed herewith as Appendix A. Price estimates in each affidavit are substantially the same. (App. 16, 22-23) Weight estimates are taken from New York Air Brake figures for the fighter system. (App. 22).

[3] The affidavit of National Malleable and Steel Castings Company is printed herewith as Appendix B.

push trucks, it follows that imposition of the requirements of Sections 1 and 2 of the Safety Appliance Act on maintenance of way vehicles will cost the railroads from $34,800,000 to $44,400,000 to equip track motor cars with brakes and couplers and an additional sum ranging from $12,600,000 to $18,600,000 to equip push trucks.

Track motor cars will be increased in weight by 300 pounds and the push trucks will be increased in weight by 225 pounds. In view of the fact that these vehicles must be lifted from the tracks by three and four man section gangs at the place of work or in the event a train comes by and since frequently the vehicles must be lifted from the track in a hurry, added weight in this amount is and should be a matter of grave concern to railroad management and labor.[4]

Prior to May 13, 1957, the Safety Appliance Acts did not apply to these vehicles. If the safety of railroad employees and the public will be substantially increased by air brakes, automatic couplers and the other devices, railroad managements have no choice but to pay the bill and section gangs have no choice but to handle the added weight. In view of the costs and practical consequences, however, a decision that the Acts apply should not be made in the absence of a determination after proper inquiry that the improvement in safety justifies the costs and other burdens imposed. In effect, the majority has made such a determination in this case, but it has not had the benefit of accident statistics, expert testimony from the Interstate Commerce Commission, from railroad manage-

[4] According to Respondent, track foremen customarily remove two cross pieces with strap iron on top which are on push trucks as they come from the shop, *"in order to make them lighter to handle."* R. 40.

ment, from railway labor organizations, or from equipment manufacturers, the sort of factual information that should form the basis for this far-reaching change in the law. This change is made on no factual basis at all.

A decision to hold, 65 years after its enactment, that the original Safety Appliance Act applies to maintenance of way vehicles would normally be (and is by the majority) predicated upon two propositions of fact:

1. Maintenance of way vehicles as presently operated are unsafe.
2. The difficulty will be remedied or at least ameliorated if the railroads are compelled to equip the vehicles with the appliances required by the Safety Appliance Acts.

In this case the majority has resolved both of these factual issues in the affirmative, in favor of coverage. An inquiry into the basis of these determinations reveals that with respect to the first, the Court found that the track motor car was equipped with a simple hand brake "designed for its individual operation" (page 4). It is further found that "the brake was wholly insufficient for the use to which the railroad put the vehicles" (page 4). The basis for these two findings is presumably the testimony of Respondent Jackson, referred to on page 3 of the opinion, to the effect that the two cars skidded 39 feet before impact whereas the track motor car alone would have stopped within 6 to 8 feet under the same conditions.

As to the second proposition, that the appliances required by the Acts would improve railroad safety, the

majority *has simply assumed this proposition to be true.*

It is submitted that regardless of trial rules concerning inferences, presumptions and burdens of proof in a personal injury case, and regardless of the tests a court applies to determine whether a plaintiff has produced enough evidence to sustain a jury verdict, the information with respect to safety needs and the effect of Safety Appliance Acts on them before this Court in this case is wholly inadequate as a basis for imposing on the railroads a cost of some $50,000,000, and on section gangs all over the country the inconvenience of 225-300 pounds more weight on these 800 pound vehicles.

The majority ignores testimony in the case by the Respondent elsewhere that the cars skidded only 20 feet. (R. 31) and testimony by an expert that the claim that the motor car alone could have been stopped in 6 to 9 feet was impossible (R. 62-69). It has treated Respondent's evidence as if the issue were whether there was any evidence to go before the jury in support of his claim, and has generalized from it to reach the proposition that a safety hazard exists with respect to brakes (and couplers) on maintenance vehicles generally.

In a personal injury case such as this, an adequate record will never be made on the question of whether or not conditions will be made more safe if air brakes and automatic couplers are installed on maintenance of way vehicles. There is a strong body of opinion to the contrary as indicated by the Interstate Commerce Commission's *amicus curiae* brief and by the arguments urged for rehearing by the Association of Amer-

ican Railroads.[5] It is particularly significant that the Brotherhood of Maintenance of Way Employees has not been before this Court urging the Court to rule that the Acts be interpreted to apply to these vehicles. The Brotherhood, always alert to the safety needs of its membership, would certainly have participated in this case had it held the view that application of the Acts would increase safety.

In this situation it is submitted that the Court should be loath to overturn 65 years of operation under this statute, 65 years of Commission interpretation of it, whether positive or negative. The sheer economic waste if the majority's assumptions are wrong should alone be a deterrent.

The majority opinion appears to assume that there is some way that the Interstate Commerce Commission can alleviate the requirements of the Acts if it finds that safety will not be advanced by the installation of any of the required appliances. On page 5 of the opinion the majority appears to indicate that the Commission could rule that power brakes are not required on motor track cars.

> "It is said that there is no place on the vehicles in question here for a grab iron or a hand hold and that power brakes might well increase the hazards of their operation. This may be true, but if these vehicles are to be used in a manner such as here, the Commission through the promulgation of standards or regulations covering such equipment should adapt the safety requirements of the Acts

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[5] Not only does the added weight make it more difficult to remove the cars from the track in an emergency, but couplers which must be uncoupled and hose connections which must be broken further complicate this job.

to the safe use of such vehicles and thus protect employees and the public from the hazards of their operation."

If this language means that the Commission has the power to rule that power brakes are not required, no support can be found in the statutes for it.

Section 1 requires power brakes on locomotives and train brakes on trains and Section 2 requires automatic couplers. The requirements are mandatory and absolute and no provision of the Acts gives the Commission any authority to modify or postpone the requirement that *some type* of power brake, train brake and coupler be employed on these vehicles.

The power which the Commission has under Section 12 to prescribe the number, dimension, location and manner of application of appliances applies in terms only to the grab irons required by Section 4 and to the sill steps, efficient hand brakes, ladders and running boards required by Section 11. Even in that situation, the Commission's power is limited to the standardization of these appliances and their location; this Court has held that the Commission does not have the power to postpone for a day the requirement that some kind of appliances of the required character be present on the cars. *Illinois Central Railroad Company* v. *Williams*, 242 U. S. 462 (1917).

Even under the majority decision, in spite of the language quoted above with respect to power brakes, it is doubtful if the Commission has the authority to modify the basic requirement that appliances meeting the statutory description be used. Thus, train brakes and couplers are in no different position under the statute than are power brakes and yet it is inconceiv-

able that the Commission could hold, after the findings which the majority has made, that a train brake system was not required because there was no need for it or because it increased safety hazards rather than reducing them and accordingly that the railroads were not required to install train brakes on maintenance vehicles.

The majority should clarify its holding with respect to the question of what appliances must be employed when the vehicles are used separately. This is a criminal statute imposing criminal penalties. If this Court is to hold that the statute applies to maintenance of way vehicles, the railroads of the country are entitled to a clearer exposition of the Court's interpretation of the Acts with respect to separability than is found in the sentence, "If [the vehicles are] used separately, though we do not pass on the question, it may well be that entirely different sections of the Acts might apply to each of the vehicles" (page 3).

In view of the burdens which this decision imposes on the railroads of the country and the maintenance of way employees of the railroads, and the strong possibility that safety of employees will actually be reduced by this decision, we respectfully request a rehearing in the case.

One further point of a purely legal nature should be made. As we have argued previously, it is as clear as anything can be that Congress never intended to cover these vehicles in enacting the Safety Appliance Acts. The legislative history demonstrates beyond question that the problems Congress sought to meet with this legislation had literally nothing to do with these

vehicles. Accordingly, on rehearing, we would ask the Court to review its holding that the words "all trains, locomotives, tenders, cars, and similar vehicles," constitute "plain language [which] could not have been more all inclusive" so as to make resort to the legislative history unnecessary or improper, whereas the words "four-wheel cars" in Section 6 are so unclear as to require resort to the legislative history, and the holding that the words mean "four-wheel coal cars" even though no Congressional intent to limit the exemption to coal cars is any where expressed. It seems impossible to state a principle of statutory construction which justifies resort to legislative history in the second instance and bars resort to legislative history in the first.

A rehearing in this case is requested.

Respectfully submitted,

STEPHEN AILES
LAIDLER B. MACKALL
1100 Shoreham Building
Washington 5, D. C.
Attorneys for Petitioner

STEPTOE & JOHNSON
Of Counsel
June 7, 1957

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

STEPHEN AILES
Counsel for Petitioner

APPENDIX A

Affidavit

County of Allegheny }
Commonwealth of Pennsylvania } ss.

Samuel L. Poorman, being duly sworn, deposes and says:

1. That he is a Vice President of Westinghouse Air Brake Company; and is in charge of sales activities for the Air Brake Division of said Company.

2. That Westinghouse Air Brake Company is a corporation of Pennsylvania, with executive offices at Pittsburgh, Pennsylvania; and the Air Brake Division of said Company has a principal manufacturing plant and general offices at Wilmerding, Pennsylvania.

3. That the Air Brake Division of said Company manufactures at its Wilmerding, Pennsylvania plant a wide variety of air brake equipments and parts for locomotives and cars, of the passenger and freight type, of railroads, street railways and subways; and sells such products, particularly to railroads, throughout the United States, Canada, Mexico, and many foreign countries in South America, Europe, the Middle East and other parts of the world.

4. That the present Westinghouse Air Brake Company is the successor to the original parent company, The Westinghouse Air Brake Company, organized in 1869 by its founder, George Westinghouse, the inventor of the air brake; that the experience and know-how of the Air Brake Division of the present Westinghouse Air Brake Company in the manufacture of air brakes for railroads and railways dates from that time; that the Air Brake Division of Westinghouse Air Brake Company and its predecessor, the original parent company, have been and are leaders in the air brake industry in the production of the braking systems now standard for many railroads in various countries, and in the development of many new and improved air brake devices and systems for the greater efficiency and

safety of operations of railroad locomotives, cars, and trains and, in particular, have led the air brake field in the development of many improvements in the present-day standard freight train air brake equipment known as the AB brake equipment.

5. That deponent entered the employ of the original parent Westinghouse Company in 1912 and thereafter served in various engineering, sales, and commercial capacities in various district offices, becoming Eastern Manager in charge of the New York District Office in 1938; that in 1944 deponent became Assistant to the First Vice President with offices at Wilmerding, Pennsylvania, and later in 1945 Assistant Vice President at Wilmerding, Pennsylvania; that deponent has served in his present capacity as Vice President-Sales with offices at Wilmerding, Pennsylvania since 1946.

6. That deponent is familiar with the various types of air brake devices, equipments, and parts which are presently manufactured and sold by the Air Brake Division of Westinghouse Air Brake Company.

7. That deponent is familiar with the request for quotation received by the Air Brake Division of Westinghouse Air Brake Company from the Baltimore and Ohio Railroad Company relative to the cost of furnishing air brake equipment for track motor cars and hand cars.

8. That under deponent's supervision, the Air Brake Division of Westinghouse Air Brake Company has prepared and submitted to the Baltimore and Ohio Railroad Company, a quotation in regular form, a copy of said quotation marked Exhibit A being attached hereto and forming part hereof, in answer to the request for quotation made by the Baltimore and Ohio Railroad Company, as referred to in the preceding paragraph.

9. That in view of the fact that it has not been the practice to apply air brake equipment to track motor cars and

hand cars, the Air Brake Division of Westinghouse Air Brake Company has not previously been called upon to furnish and does not presently have for offering nor does it manufacture a recommended standard commercial air brake equipment specifically designed for such vehicles; that the alternate schedules of equipment identified in the aforesaid quotation represent a compilation of present standard components, such as brake valves, brake cylinders, control valves, regulating valves, safety valves, check valves, and other similar devices developed for other purposes but which air brake engineers of the Air Brake Division believe can be assembled to serve as a practical and suitable power brake equipment for track motor cars and hand cars operated separately or in coupled relation to other track motor cars and hand cars; and that the schedules of components in said quotation do not include other component items required for installation of the equipment, such as piping, mounting brackets, and other fastening devices which are customarily provided by the customer or by independent contractors installing the air brake equipment.

10. That additional costs will be incurred by the customer, as to which deponent can give no estimate, in connection with engineering and other services to determine a suitable manner of mounting the air brake components on the vehicles, adequacy of brake shoes and brake rigging presently employed in hand operated brake equipment of track motor cars for use in a power brake system, provision of suitable brake shoes and brake rigging in the case of hand cars not previously equipped with brake equipment, as well as labor and material costs involved in the actual installation of the air brake equipment components, piping, brake shoes and brake rigging in associative relation into an integrated operating brake system on the vehicles; and that therefore the prices stated on the quotation represent only the cost of that portion of the equipment and installation which the Air Brake Division of said Company would furnish under its quotation.

11. That in view of the fact that deponent and the engineering personnel of the Air Brake Division of Westinghouse Air Brake Company have had no prior experience in furnishing air brake equipment for installation on track motor cars and hand cars and in view of the fact that they are therefore without experience and knowledge of special requirements as may later be determined to be desirable for air brake equipment of such vehicles, such as necessary rates of retardation for obtaining required stopping distances, compensation for variations in load by means of multiple capacity brake equipment, and other factors involved in operation of these vehicles under any and all service conditions, deponent and the engineering personnel of the Air Brake Division of said Company are without a suitable guide or standard on the basis of which the air brake equipment components identified in the aforesaid quotation can with certainty be recommended or guaranteed as the best possible brake equipment that could be designed for all types of motor cars and all kinds of operating conditions; and since deponent and the engineering personnel of the Air Brake Division of said Company have no present detailed specifications as to what would be considered satisfactory braking performance under any and all conditions which such vehicles will encounter in service, it must be recognized that unless and until actual installations of air brake equipment are made on track motor cars and hand cars and tried and tested under actual service conditions, it is possible that special new designs of air brake components may be dictated by the special service conditions or mounting requirements of the various types of vehicles, together with further engineering study of the problems and factors special to application of air brake equipment to such vehicles; and that it is not presently possible for deponent to state unqualifiedly that the air brake equipment set forth in the aforesaid quotation will serve to provide adequate braking under all conditions which the said vehicles may encounter in service operation.

12. That, if as a result of installation and performance data obtained on air brake equipment of the type set forth in the aforesaid quotation, on various types of motor cars, it appears that in order to satisfactorily meet the service requirements incident to use of track motor cars and hand cars under different conditions, an entirely new and more comprehensive air brake equipment should be designed and developed, then a program of design and development of such new equipment and time required to manufacture such equipment could conceivably require as much as a year; and because of the uncertainty with respect to all factors involved in such a program of development, no present reasonable estimate of what such a program of development would cost is feasible at the present time.

SAMUEL L. POORMAN

Sworn to and subscribed before me this 5th day of June, 1957.

TRUMAN C. WAMPLER
Notary Public.

(SEAL)

TRUMAN C. WAMPLER, Notary Public
Wilmerding, Allegheny County
My Commission Expires
January 31, 1961

Exhibit A

WESTINGHOUSE AIR BRAKE COMPANY
WILMERDING, PENNSYLVANIA
AIR BRAKE DIVISION

QUOTATION SHEET

(Please refer specifically to this quotation when placing order)

May 31, 1957

Mr. H. A. Lockhart
General Purchasing Agent
Baltimore & Ohio Railroad
Baltimore 1, Maryland

Dear Sir:

Mr. John E. Nolan Jr. of the legal firm Steptoe and Johnson, representing the Baltimore and Ohio Railroad, requested by telephone, a quotation on equipment suitable for maintenance of way motor and trailer cars. Although it is not general practice to apply power brakes to such vehicles, the attached Specifications 1, 1A, 2, and 2A, all dated May 29, 1957, represent the equipment which we would tentatively offer for such application.

Specifications 1 and 1A cover a straight-air type equipment. With this method, air is supplied to the brake cylinders of the motor and trailer directly from the brake valve on the motor car. In straight-air operation, the hose between the motor and all trailers must remain connected and open to provide brakes.

Specifications 2 and 2A cover an automatic type equipment. With this method, air pressure is stored in a reservoir on each unit and brake cylinder air pressure is applied from this reservoir by reducing pressure in the train line at the break valve on the motor unit. The air in the reservoirs is also supplied from the brake valve. The automatic brake will apply the brakes on all units during an

unintentional separation providing the brake system has been charged.

We are pleased to quote the following prices:

Specification # 1, dated May 29, 1957, covering a straight-air brake equipment suitable for one (1) maintenance of way motor car is priced at $464.37

Specification # 1A, dated May 29, 1957, covering a straight-air brake equipment suitable for one (1) maintenance of way trailer car is priced at ..... $ 90.59

Specification # 2, dated May 29, 1957, covering an automatic air brake equipment suitable for one (1) maintenance of way motor car is priced at $621.46

Specification # 2A, dated May 29, 1957, covering an automatic air brake equipment suitable for one (1) maintenance of way trailer car is priced at $193.07

The above prices are f.o.b. Wilmerding, Pa. and are subject to adjustment to conform to the prices in effect at the time of shipment.

While these Specifications represent what we would consider a suitable brake system, the Specifications may require changes to meet present unknown conditions. In this event, the prices of the equipments would change accordingly.

Yours very truly,

K. CHRISSINGER
K. Chrissinger
Assistant Eastern Manager

KC:HML:ry

TENTATIVE SPECIFICATION NO. 1

Covering

STRAIGHT AIR BRAKE EQUIPMENT SUITABLE FOR ONE MAINTENANCE OF WAY MOTOR CAR

for

B & O RAILROAD

SPECIFICATION ISSUED: MAY 29, 1957

Item	Quan.	Description	Pc. No.	Outline Dwg. No.	Net Wt. Ea. Lbs.
		BRAKE DETAILS			
1	1	SA-5 brake valve, complete with locking pin and chain	554356	E-61783	6¼
2	1	2½" S.P. air gage (MR)	516314	E-64859-1	1
3	2	6" x 2½" brake cylinders	534039		
4	2	9/32 x 22" hose	205889		¾
		COMPRESSOR DETAILS			
5	1	Belt driven air compressor	226720		
a	1	8" pulley	211444		
		MAIN RESERVOIR DETAILS			
6	1	8" x 41" enamelled main reservoir	549902	E-69803-102	46
a	1	½" drain cock	99080		1½
7	1	E-1 safety valve	24107-0100		
		PIPING DETAILS			
8	2	½" cutout cocks	99085		1½
9	2	⅝" x 19" hose w/½" threaded nipple & HS-2 coupling	541606	C-A78956-20	

NOTES:

1. Compressor, item 5, will provide 7¼ ft. of free air per minute @ 1250 rpm. Maximum compressor speed, must not exceed 3000 rpm. Engine driven pulley and belts are not included in this specification.
2. An alternate gasoline driven compressor unit complete with engine can be supplied on request.
3. Warning details are not covered in this specification but can be provided if required.
4. Pipe, pipe fittings, mounting brackets, and brake rigging not included in this specification. Braking ratio should be based on 45 psi maximum brake cylinder pressure, and 70% of the light weight of the car.

WESTINGHOUSE AIR BRAKE COMPANY
AIR BRAKE DIVISION
WILMERDING, PA., U.S.A.

ARM:sjl

TENTATIVE SPECIFICATION NO. 1A

Covering

STRAIGHT AIR BRAKE EQUIPMENT SUITABLE FOR ONE MAINTENANCE OF WAY TRAILER CAR

for

B & O RAILROAD

SPECIFICATION ISSUED: MAY 29, 1957

Item	Quan.	Description	Pe. No.	Outline Dwg. No.	Net Wt. Ea. Lbs.
1	2	6" [illegible]" brake cylinder	534039		
2	2	9/32" x 22" hose	205889		¾
3	2	½" cutout cock	99685		1½
4	2	⅝" x 19" hose w/½" threaded nipple and HS-2 coupling	541606	C-A78956-20	
5	1	½" cutout cock w/side vent	501084		1½

NOTES:

1. Pipe, pipe fittings, mounting brackets, and brake rigging are not included in this specification. Braking ratio should be based on 45 psi maximum brake cylinder pressure, and 70% of the light weight of the car.
2. Cutout cock, item 5, is used for changing from empty to loaded weight of car. Brake cylinder piping should be arranged to brake empty car with one brake cylinder with cock, item 5, closed. Loaded car should be braked with two brake cylinders with cock, item 5, open.

WESTINGHOUSE AIR BRAKE COMPANY
AIR BRAKE DIVISION
WILMERDING, PA., U.S.A.

ARM:sjl

TENTATIVE SPECIFICATION NO. 2

Covering

AUTOMATIC AIR BRAKE EQUIPMENT SUITABLE FOR ONE MAINTENANCE OF WAYS MOTOR CAR

for

B & O RAILROAD

SPECIFICATION ISSUED: MAY 29, 1957

Item	Quan.	Description	Pc. No.	Outline Dwg. No.	Net Wt. Ea. Lbs.
		BRAKE DETAILS			
1	1	SX-2 brake valve	16119	D-13885	17½
a	1	brake valve handle	72306		
2	1	N-1 reducing valve	552238-0070	C-A72918-62	4¾
3	1	3½" duplex air gage (MR & BP)	44316	D-78518-11	
4	1	D-1 triple valve	EC-8840		
5	1	7⅛" x 14" enamelled auxiliary reservoir (455 cu. in.)	501142	B-A69807-6	
a	1	Reservoir release valve	88912		
b	1	¼" pipe plug	1635	LS-40-10	
6	2	6" x 2½" brake cylinder	534039		
7	2	9/32" x 22" hose	205889		
		MAIN RESERVOIR DETAILS			
8	1	8" x 41" main reservoir	549902	E-69803-102	
a	1	½" drain cock	99080		
9	1	E-1 safety valve	24107-0100		
		COMPRESSOR DETAILS			
10	1	Belt driven air compressor	226720		
a	1	8" pulley	211444		
		PIPING DETAILS			
11	2	½" cutout cock	99085		
12	2	⅝" x 19" hose with ½" threaded nipple and HS-2 coupling	541606	C-A78956-20	

NOTES:

1. Compressor, item 5, will provide 7¼ ft. of free air per minute @ 1250 rpm. Maximum compressor speed, must not exceed 3000 rpm. Engine driven pulley and belts are not included in this specification.
2. An alternate gasoline driven compressor unit complete with engine can be supplied on request.
3. Warning details are not covered in this specification but can be provided if required.
4. Pipe, pipe fittings, mounting brackets, and brake rigging not included in this specification. Braking ratio should be based on 45 psi maximum brake cylinder pressure, and 70% of the light weight of the car.

WESTINGHOUSE AIR BRAKE COMPANY
AIR BRAKE DIVISION
WILMERDING, PA., U.S.A.

ARM:sjl
5/29/57

TENTATIVE SPECIFICATION NO. 2A

Covering

AUTOMATIC AIR BRAKE EQUIPMENT SUITABLE FOR ONE MAINTENANCE OF WAYS TRAILER CAR

for

B & O RAILROAD

SPECIFICATION ISSUED: MAY 29, 1957

Item	Quan.	Description	Pc. No.	Outline Dwg. No.	Net Wt. Ea. Lbs.
1	1	D-1 triple valve	EC-8840		
2	1	7⅛" x 14" enamelled auxiliary reservoir (455 cu. in.)			
a	1	Reservoir release valve	88912		
b	1	¼" pipe plug	1635	LS-40-10	
3	2	6" x 2½" brake cylinder	534039		
4	2	9/32" x 22" hose	205889		
5	2	½" cutout cock	99085		
6	2	⅝" x 22" hose w/½" threaded nipple and HS-2 coupling	540568		
7	1	½" cutout cock w/side vent	501084		1½

NOTES:

1. Pipe, pipe fittings, mounting brackets, and brake rigging are not included in this specification. Braking ratio should be based on 45 psi maximum brake cylinder pressure, and 70% of the light weight of the car.

2. Cutout cock, item 7, is used for changing from empty to loaded weight of car. Brake cylinder piping should be arranged to brake empty car with one brake cylinder with cock, item 7, closed. Loaded car should be braked with two brake cylinders with cock, item 7, open.

WESTINGHOUSE AIR BRAKE COMPANY
AIR BRAKE DIVISION
WILMERDING, PA., U.S.A.

ARM:ajl

5/29/57

Affidavit

The New York Air Brake Company
230 Park Avenue
New York 17, N. Y.

to

Messrs. Steptoe and Johnson
1100 Shoreham Building
Washington 5, D. C.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

The undersigned R. Lee Mitchell being duly sworn says that he is General Manager-Railroad Sales of The New York Air Brake Company, that he makes the following statement in that capacity, and that the following statement is true and correct to the best of his knowledge and belief:

You have requested us, as one of the principal suppliers of railroad air brake equipment, to furnish information concerning the type of equipment required to be installed upon a motor track car towing a push truck or trailer car in accordance with the decision of the Supreme Court of the United States in The Baltimore and Ohio Railway Company, petitioner, v. Daniel T. Jackson.

In furnishing this information we are assuming that the decision requires that the equipment would have to consist of an air brake system embracing both cars with braking apparatus on the trailer car controlled from the motor track car. Inasmuch as the decision appears to us to be silent on the question of whether the system need contain automatic protection against a break-in-two of the coupled cars. i.e., a device which would apply brakes automatically to both the motor track car and trailer car in the event that they separate, we are furnishing the information concerning both a system containing this protection as well as a straight air brake system.

In furnishing this information, it must be understood that, while we have exerted reasonable efforts to compile

estimates in the short time available to us, we must reserve the right to alter these estimates in the event that equipment of the kind described should be ordered from us. In addition, our estimates are concerned solely with the operating air brake equipment and exclude foundation brake rigging and brake shoes which would be required to complete the braking system.

While no system suitable for the application in question is presently sold for railroad use, we believe the least expensive solution would be to assemble a system from existing small lightweight components presently being incorporated in braking systems for such non-railroad use as streetcars and automotive vehicles. Inasmuch as the proposed application is a novel one, the effectiveness of any system so assembled is, of course, a matter that could not be determined without careful testing under actual conditions of use.

We estimate that were a straight air brake system to be assembled in this manner the weight of the equipment on the motor track car would be approximately 100 pounds and the weight of the equipment on the trailer car would be approximately 25 pounds. Should automatic protection against a break-in-two be required the weights would increase to approximately 150 pounds and 75 pounds, respectively.

You have informed us that a supplier to the Baltimore and Ohio Railway Company has estimated the selling price of the equipment as follows:

Straight air brake system	
motor track car	$464.37
trailer car	90.59
Automatic air brake system	
motor track car	$621.46
trailer car	193.07.

We believe our sales prices for the equipment would approximate these figures.

R. LEE MITCHELL
R. Lee Mitchell,
General Manager-Railroad Sales

THE NEW YORK AIR BRAKE COMPANY

Sworn to before me, this
Fifth day of June, 1957

MARGARET L. KELLER
Notary Public

Margaret L. Keller
Notary Public for the State of New York
No. 31-7208950
Qualified in New York County
Term Expires March 30, 1958

APPENDIX B

STATE OF OHIO
COUNTY OF CUYAHOGA } ss:

I, William J. Metzger, being of legal age, depose and say as follows:

That for forty-six years I have been an employee of National Malleable and Steel Castings Company, a large United States manufacturer of automatic couplers for use on railroad vehicles. For the past twenty years I have been Chief Coupler Design Engineer for that company. I am familiar with the type of motor track cars and push trucks involved in the recent decision of the Supreme Court of the United States in the case of the Baltimore and Ohio Railroad Company vs. Jackson. My employer manufactures couplers smaller than standard sizes, about the smallest of which is known as a reduced size Willison coupler which is used to a great extent on mine cars in the United States and in foreign countries. This reduced size Willison coupler sells for an average price of about $40.00 each and weighs 56 pounds. It is normally mounted in a pocket casting applied to the car, each of which weighs approximately 45 pounds and sells for about $20.00 each. The application of two couplers and two pocket castings to a car would add about 200 pounds to the weight of the car without the use of any cushioning device to absorb shocks between the cars. The addition of a cushioning device applied to each end of the car would add more weight, depending upon the type of device used.

I estimate that to develop a coupler lighter than the aforesaid Willison coupler for use on said cars would

take about nine months and the development expenses involved would be approximately from $25,000 to $30,000.

WILLIAM J. METZGER
William J. Metzger

June 4, 1957

Sworn to before me this 4th day of June, 1957.

HARRY E. RICE
Notary Public

Harry E. Rice, *Notary Public*
My Commission Expires Jan. 23, 1959